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Supreme Court of the United States

No. 780

HARRY HAROLD CHERETON,

Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI

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Supreme Court of the United States

No.

HARRY HAROLD CHERETON,

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PETITION FOR WRIT OF CERTIORARI

SUMMARY STATEMENT OF MATTER INVOLVED

The Petitioner herein was originally indicted in Detroit in January of 1956 in a five-count Indictment, the first count of which was a conspiracy charge and each of the next four counts charged substantive violations of §152 of Title 18, U.S.C. The case finally came to trial in April of 1959. Approximately a week after the trial commenced the Court dismissed the conspiracy count (Count 1.) and the trial proceeded on the four remaining substantive counts. The Petitioner was, subsequently, convicted on each of the four remaining counts and sentenced to two years confinement on each count to run concurrently. Appeals were prosecuted and this Court denied Certiorari, 366 U.S. 924. Thereafter, your Petitioner filed a Petition with the District Court for a Writ of Error Coram Nobis supported by Affidavits of four of the twelve trial jurors. The District Court denied the petition and the Petitioner appealed to the United States Court of

Appeal for the Sixth Circuit who affirmed the lower court's verdict, 309 F.2d. 197. This matter is now before this Court on a Petition for Writ of Certiorari.

JURISDICTIONAL CONTENTION

It is the contention of the Petitioner herein that this Honorable Court has jurisdiction and should accept jurisdiction of this cause in that there is a conflict between the lower court's decision herein, same being **Chereton v. U. S. A.**, 309, F.2d. at 197, and other decisions of this Honorable Court as reported in the case of **Clyde Mattox v. U. S.**, 146 U.S. 140, and the subsequent decisions of **Stein v. New York**, 346 U.S. at 156, **McDonald v. Pless**, 238 U.S. at 264, and the case of **Hyde v. U. S.**, 225 U.S.

It is respectfully submitted that the decisions above referred to are in conflict each with the other and do not adequately lay down sufficient and adequate guide lines to guide the lower courts in their determination of the issues herein presented.

QUESTION PRESENTED

The question here presented for the Court's determination is:

SHOULD POST-TRIAL AFFIDAVITS OF JURORS BE RECEIVED AND CONSIDERED BY THE LOWER COURTS IN DETERMINING THE ISSUES PRESENTED BY A PETITION FOR WRIT OF CORAM NOBIS?

ARGUMENT

It is respectfully submitted that the above-posed questions should be answered in the affirmative. In this day and age of complicated litigation created in a large degree by the Government's reliance upon the provisions of Title 18, U.S.C. §371, relating to conspiracies and the difficulties encountered by the courts and defense counsel in the handling of trial of cases involving conspiracy counts and substantive counts in addition thereto, there can be no doubt that the trial courts exercise every effort to fully and completely instruct the juries so as to make every effort to insure the defendants a fair and impartial trial of criminal cases. This Court, in the case of **McDonald v. Pless (Supra)**, fully discussed this matter and said,

> "the rule on the subject has varied. Prior to 1785 a juror's testimony in such cases was sometimes received, though always with great caution. In that year Lord Mansfield in **Vaise v. Delaval**, 1 T.R. 11, refused to receive the affidavits of jurors to prove that their verdict had been made by lot. That ruling soon came to be almost universally followed in England and in this country. Subsequently, by statute in some states, and by decision in a few others, the jurors' affidavits as to an overt act of misconduct, which was capable of being controverted by other jurors, was made admissable and, of course, the argument in favor of receiving such evidence is not only very strong but unanswerable — when looked at solely from the standpoint of the private party who has been wronged by such misconduct."

The Court then went on to say,

> "If evidence thus secured could be thus used, the result would be to make what was intended to be a private deliberation, the constant subject of public investigation to the destruction of all frankness and freedom of discussion and conference?"

However, as in the case at bar where the only means open to the Appellant, Petitioner herein, is to use affidavits or testimony of the jurors, the Petitioner should, therefore, in attempting to assure himself of due process of law, be entitled to present and have considered by the lower courts affidavits made at the trial and executed by the jurors as the only means of assuring that which the **Constitution of the United States** grantees to all defendants in all criminal cases in the courts of the United States. In view of the fact that none of the foremen-tioned cases, wherein this proposition has been considered, lay down a true and absolute guide for the lower courts, it is respectfully submitted that this Honorable Court should invoke its jurisdiction to lay down guide lines for the lower courts in attempting to assure to all persons charged with crime a fair and impartial trial and due process of law.

Respectfully submitted,

O. B. CLINE, JR.,
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above was this _____ day of January, 1963, mailed to the SOLICITOR GENERAL of the UNITED STATES, Department of Justice, Washington 25, D. C. and to LAWRENCE BUGOW, ESQ., United States Attorney, Main Post Office Building, Detroit, Michigan.

_____

O. B. CLINE, JR.